IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1803 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAVJIHAI AMBALAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1803 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

RULE SERVED for Respondent No. 1,2

MS PB SHETH AGP for Respondent No. 2-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 01/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 17/01/04, passed by respondent no.2 herein, for detaining the petitioner u/s.3 & 5 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short, "the said Act").

2. It was alleged against the petitioner that the petitioner was a fair price shop licence holder and that he was selling kerosene to card holders, without making necessary entries in the cards of the consumers. It was also alleged that he was found in unauthorized possession of 660 liters of kerosene. The detaining authority found it necessary to detain him, with a view to prevent him from continuing the said illegal activity. Therefore, the order of detention was passed against the petitioner.

3. The petitioner has challenged the said order of his detention on various grounds. It has been contended by the petitioner that the wife of the petitioner had submitted a representation to the detaining authority and it was requested that the representation may be forwarded to the State Government as well as to the Central Government. That, however, the representation was not forwarded to the Central Government, and therefore, the petitioner's right of consideration to his representation by the Central Government has been frustrated and therefore, the order of detention is not legal and valid. It is also contended that there was a delay in forwarding the representation to the State Government by the detaining authority and therefore also, the further continuation of the detention of the detenu is illegal. That, therefore, the order of his detention is illegal and it may be quashed and set aside.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.P B Sheth learned AGP appeared on behalf of the respondents. I have heard the learned advocate for the petitioner, the learned AGP for the respondent State and the learned Addl.Standing Government Counsel for the Union of India.

5. The learned advocate for the petitioner has contended that the petitioner's wife had sent a representation to the detaining authority. A copy of the said representation has been placed at page 234. In the said representation, the wife of the petitioner had requested the detaining authority to forward copies of the said representation to the State Government, to the Central Government and to the Advisory Board. There is

no dispute about the same.

6. The affidavit of the State Government produced by the learned AGP is taken on record. It can be gathered from the said affidavit that the copies of the said representation were forwarded to the State Government as well as to the Advisory Board. Therefore, to that extent, the requirement has been complied with. The learned Addl.Standing Government Counsel appearing for the Union of India has submitted affidavit of the Under Secretary to the Union of India. It is also taken on record. On going through the said affidavit, it can be gathered that a copy of the said representation was not received by the Central Government and therefore, the Central Government had no occasion to consider the same. It is, therefore, clear that though the wife of the petitioner had positively requested the detaining authority to forward copies of the said representation to the Central Government, neither the detaining authority nor the State Government forwarded the same. Therefore, the Central Government had no occasion to consider the said representation.

7. It is well established that a right to submit an effective representation is a constitutional right guaranteed under Article 22(5) of the Constitution of India. When the detenu had a right to send his representation to the appropriate authority, then a further right vested in the detenu would be to see that the said right is positively exercised, and for so doing, there should be effective consideration to the representation made by the detenu. In the present case, we find that the State Government has considered the representation and therefore, that part has been complied with. However, a copy of the representation was not forwarded to the Central Government despite a request to that effect. It is not explained as to why a copy of the said representation was not forwarded to the Central Government for their consideration.

8. In absence of any explanation from the detaining authority or from the State Government, it is clear that a copy of the said representation was not forwarded to the Central Government without any reason. Therefore, the petitioner's right of consideration to his representation by the Central Government under Article 22(5) of the Constitution has been denied and therefore, the further detention of the detenu cannot be sustained in the eye of law. In that view of the matter, the order of detention is required to be quashed and set aside.

9. At this stage, the learned advocate for the petitioner states that in view of the above, she would not press other grounds raised by her as aforesaid.

10. For the foregoing reason, this petition is allowed. The impugned order of detention dated 17/01/04 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Ravjibhai Ambalal Patel, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

pravin/